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E-filed on 4/10/07

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UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:

USA Commercial Mortgage Company
06-10725 – Lead Case

USA Capital Realty Advisors, LLC
06-10726

USA Capital Diversified Trust Deed Fund,
LLC
06-10727

USA Capital First Trust Deed Fund, LLC
06-10728

USA Securities, LLC
06-10729

Debtors.

Jointly Administered

Chapter 11 Cases

Judge Linda B. Riegle Presiding

Date: June 22, 2007

Time: 9:30 a.m.

Affecting:

☐ All Cases

or Only:

☒ USA Commercial Mortgage Company

☐ USA Capital Realty Advisors, LLC

☐ USA Capital Diversified Trust Deed Fund, LLC

☐ USA Capital First Trust Deed Fund, LLC

☐ USA Securities, LLC

**FIRST AND FINAL APPLICATION OF THE OFFICIAL
UNSECURED CREDITORS COMMITTEE OF USA COMMERCIAL
MORTGAGE COMPANY FOR REIMBURSEMENT OF EXPENSES OF
COMMITTEE MEMBERS**

This First and Final Application for Reimbursement of Expenses (the
“Application”) is filed by the Official Committee of Unsecured Creditors of USA
Commercial Mortgage Company (“USACM Committee”).¹ By this Application, the

¹ The undersigned counsel represented the USACM Committee and now represents the USACM Liquidating Trust. The USACM Committee ceased to exist on the March 12, 2007 Effective Date of the confirmed Plan of Reorganization.

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1 USACM Committee requests approval of reimbursement of expenses incurred by certain
2 members of the USACM Committee in connection with these Chapter 11 Cases during the
3 period from July 25, 2006 through December 2006 (the "Application Period").
4 Specifically, USACM Committee members Larry Rieger and Donald Walker request
5 awards of \$268.60 and \$60.00 respectively for reimbursement of expenses related to their
6 service on the USACM Committee.

7 This Application is made pursuant to 11 U.S.C. § 503(b)(3)(F) and Rule 2016 of
8 the Federal Rules of Bankruptcy Procedure, and is supported by the attached
9 Memorandum of Points and Authorities, the record in these cases, and any evidence and
10 oral argument to be presented at the time of the hearing on the Application.

11 DATED April 10, 2007.

12 **LEWIS AND ROCA LLP**

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14 By /s/ RC (#006593)
15 Susan M. Freeman
16 Rob Charles
17 *Attorneys for USACM Liquidating Trust*
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POINTS AND AUTHORITIES

I.

STATEMENT OF FACTS

1. On April 13, 2006 (the “Petition Date”), USA Commercial Mortgage Company (“USACM”), USA Securities, LLC (“USA Securities”), USA Capital Realty Advisors, LLC (“USA Realty”), USA Capital Diversified Trust Deed Fund, LLC (“USA Diversified”), and USA Capital First Trust Deed Fund, LLC (“USA First” and, collectively with USACM, USA Securities, USA Realty, and USA Diversified, the “Debtors”) filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code. The Court approved joint administration without substantive consolidation on May 9, 2006.

2. No trustee or examiner has been appointed in these Chapter 11 Cases. The Debtors operated their businesses as debtors in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

3. On May 10, 2006, the Office of the United States Trustee (the “US Trustee”) appointed the following four committees in these Chapter 11 Cases and amends the Committees’ composition thereafter:

(a) The Official Committee of Holders of Executory Contract Rights Through USA Commercial Mortgage Company;

(b) The Official Unsecured Creditors Committee for USA Commercial Mortgage Company;

(c) The Diversified Committee; and

(d) The Official Committee of Equity Security Holders of USA Capital First Trust Deed Fund, LLC.

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1 4. The Official Committee of Unsecured Creditors of USA Mortgage Company
2 ("USACM Committee") represented the interests of the unsecured creditors of USA
3 Commercial Mortgage Company.

4 5. On January 8, 2007 the Court entered its Order Confirming the Debtors'
5 Third Amended Joint Chapter 11 Plan of Reorganization.

6 6. USACM Committee members Larry Rieger and Donald Walker have
7 incurred actual and necessary expenses arising from their participation on the USACM
8 Committee (see Exhibit A attached). Upon request of the Court or any party in interest,
9 each USACM Committee member will provide receipts for any of the costs for which they
10 request reimbursement.

11 7. Mr. Rieger's expenses are summarized as follows:

Expenditure	Amount
Airfare charges incurred when traveling to and from Las Vegas, Nevada on July 25, 2006, for a Committee Meeting	250.60
Taxi to Offices	18.00
Total	\$268.60

17 8. Donald Walker's expenses are summarized as follows:

Expenditure	Amount
Mileage charges incurred in attending the hearings and meetings	60.00
Total	\$60.00

22 9. The USACM Committee makes this Application pursuant to 11 U.S.C.
23 § 503(b)(3)(F) and Bankruptcy Rule 2016(a). This Court has jurisdiction to consider this
24 Application pursuant to 28 U.S.C. §§ 157 and 1334. Venue of this proceeding is proper in
25
26

1 this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to
2 28 U.S.C. § 157(b)(2)(A).

3 II.

4 ARGUMENT

5 10. Bankruptcy Code section 503(b)(3)(F) grants administrative expense priority
6 to “the actual, necessary expenses . . . incurred by - a member of a committee appointed
7 under section 1102 of [the Bankruptcy Code], if such expenses are incurred in the
8 performance of the duties of such committee.” As such, applicable case law permits the
9 reimbursement of the reasonable and necessary expenses actually incurred by the official
10 committee members as a result of their service on such committee. *See, e.g., Creditors’*
11 *Committee Chairman v. Fibrex, Inc. (In re Fibrex, Inc.)*, 270 B.R. 714, 716 (Bankr. S.D.
12 Ind. 2001); *In re Colorado-Ute Elec. Assn., Inc.*, 132 B.R. 183, 184 (Bankr. D. Colo.
13 1991); *In re General Oil Distribs., Inc.*, 51 B.R. 794, 805 (Bankr. E.D.N.Y. 1985); *In re*
14 *Maiden Mills, Inc.*, 42 B.R. 476, 487-88 (Bankr. D. Mass. 1984).

15 11. The expense reimbursement requested by USACM Committee members
16 Larry Rieger and Donald Walker satisfies the actual, reasonable and necessary standard set
17 by the case law. All of the expenses were incurred as a result of the members' participation
18 in these Chapter 11 Cases. Thus, the expense reimbursement request should be approved
19 as actual, reasonable, and necessary expenses of the USA USACM estate.

20 III.

21 CONCLUSION

22 WHEREFORE, the USACM Committee respectfully requests that the Court enter
23 an Order: (1) granting the Application; (2) awarding and directing the payment of \$268.60
24 for the reimbursement of costs to USACM Committee member Larry Rieger; (3) awarding
25 and directing the payment of \$60.00 for the reimbursement of costs to USACM
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1 Committee member Donald Walker; and (4) granting such other and further relief as the
2 Court deems just and appropriate.

3 RESPECTFULLY SUBMITTED April 10, 2007.
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5 **LEWIS AND ROCA LLP**
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7 By /s/ RC (#006593)
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10 *Attorneys for USACM Liquidating Trust*
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